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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 29 1993

In the Matter of)

Tariff Filing Requirements for)
Nondominant Common Carriers)CC Docket No. 93-36FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ In the Notice, the Commission proposes to streamline to the maximum extent possible tariff filing rules for domestic nondominant common carriers. Century supports the Commission's effort, and particularly urges it to ensure that cellular and other wireless carriers receive maximum streamlined relief from tariff filing burdens. The unique nature of wireless services and the competitive market in which they exist render streamlined treatment for these carriers essential.

On January 29, 1993, the Cellular Telecommunications Industry Association ("CTIA") filed a Request for Declaratory Ruling and Petition for Rulemaking that, among other things, sought the designation of cellular carriers as nondominant and the adoption of minimal tariffing requirements for these licensees. On March 19, 1993, Century submitted comments

¹ Tariff Filing Requirements for Nondominant Common Carriers, FCC 93-103 (released Feb. 19, 1993) [hereinafter Notice].

strongly supporting CTIA's proposals. Those comments are attached hereto.

As detailed by CTIA and numerous parties commenting on its petition, cellular and other wireless services are particularly deserving of maximum streamlined treatment. To date, wireless services have not been tariffed. Even prior to the adoption of its forbearance decisions, the Commission

however, the Commission must ensure that cellular and other wireless carriers receive maximum streamlined treatment to the extent they are subject to federal tariffing requirements.

Respectfully submitted,
CENTURY CELLUNET, INC.

By: W. Bruce Hanks (NTH)
W. Bruce Hanks

DUPLICATE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Request of)
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CELLULAR TELECOMMUNICATIONS)
INDUSTRY ASSOCIATION)
)
For Declaratory Ruling and)
Amendment of the Commission's)
Policies and Rules Pertaining to)
the Regulation of Cellular Carriers)

RM-8179

To: The Commission

COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its comments on the above-captioned Request for Declaratory Ruling and Petition for Rulemaking ("Request") filed by the Cellular Telecommunications Industry Association ("CTIA") on January 19, 1993.¹ As detailed below, Century fully supports CTIA's request for a declaratory ruling that cellular carriers are exempt from tariff filing requirements for services governed by Section 221(b) of the Communications Act² and to the extent that they are "connecting carriers." Century further supports the designation of cellular carriers as non-dominant and the adoption of minimal tariffing requirements for these carriers.

¹ The Request appeared on Public Notice, Report No. 1927 (Feb. 17, 1993).

² 47 U.S.C. § 221(b).

I. INTRODUCTION AND SUMMARY

On November 13, 1992, the U.S. Court of Appeals for the District of Columbia Circuit in AT&T v. FCC vacated the Commission's policy of exempting non-dominant common carriers

Communications Act. CTIA also seeks clarification that the "connecting carrier" exception to the federal tariff filing requirement in Section 203(a) applies to cellular carriers engaged in interstate communication exclusively through interconnection with the facilities of an unaffiliated interexchange carrier. Finally, it requests that the Commission declare cellular carriers non-dominant and simplify the tariff filing requirements with which they must comply.

Century strongly supports CTIA's initiative. As the operator of numerous cellular systems throughout the country, Century believes that the requested clarification and modification of cellular carriers' tariff obligations is essential. Given the competitive nature of the cellular marketplace, elaborate tariffing requirements for these carriers would be unnecessary and counterproductive. Century agrees that Section 221(b) and the connecting carrier provision in Section 203(a) exempt most cellular services from federal tariffing requirements, but believes that these provisions are appropriately interpreted even more broadly than suggested by CTIA. Further, the designation of cellular carriers as non-dominant and the adoption of more simplified tariff filing requirements for affected cellular services is both deserved and fully consistent with Commission precedent.

II. TARIFFING WOULD BE COUNTERPRODUCTIVE IN THE COMPETITIVE CELLULAR MARKETPLACE

The cellular marketplace is characterized by extensive competition. Indeed, the two cellular licensees in each market currently compete actively with each other in terms of price, quality and scope of service. Resellers of cellular service provide added competition. Providers of related types of two-way communications, such as Specialized Mobile Radio ("SMR") and Enhanced Specialized Mobile Radio ("ESMR") licensees, also are increasingly offering services that are interchangeable with cellular. The impending introduction of personal communications services ("PCSs") will provide even more vigorous competition.

In such an environment, imposing tariffing requirements on cellular carriers would not only be unnecessary, but could have serious adverse effects on the marketplace. The delays inherent in the tariff process, as well as the limitations of fixed service plans, are likely to hamper cellular carriers' ability to respond quickly and creatively to customer needs. In addition, the disclosure of each carrier's pricing schedule -- and its underlying costs if deemed dominant -- is likely to undermine competition, thereby depriving the public of the most reasonable rates.

Imposing tariffing requirements on cellular carriers would also substantially disadvantage them in the marketplace

vis-a-vis their non-tariffed competitors. Neither SMR nor ESMR providers are currently subject to tariffing requirements. Moreover, one of the regulatory schemes considered for PCS would also remove it from the scope of federal tariff jurisdiction. Under the burden of costly tariff regulation, cellular carriers would not be able to compete effectively, thereby depriving the public of the benefits of full and fair competition. Given these likely adverse impacts, imposing federal tariffing requirements on cellular carriers is not only unnecessary, but counterproductive.

III. CELLULAR SERVICE IS INHERENTLY AND PREDOMINANTLY A LOCAL SERVICE EXEMPT FROM FEDERAL TARIFFING OBLIGATIONS

CTIA properly characterizes cellular as predominantly a local service. Indeed, the cellular service was designed around the concept of local service areas. As CTIA correctly recognizes,

the overwhelming percentage of cellular calls are completed within the MSA or RSA of origination and are therefore jurisdictionally intrastate, and the vast majority of interstate traffic that is originated or terminated on cellular systems is transmitted over the facilities of interexchange carriers.⁵

This relatively minimal presence in the interstate market, especially in comparison to its major participants,

⁵ CTIA Request at 7.

illustrates that tariffing requirements for cellular carriers are unnecessary.

Century agrees with CTIA that Section 221(b) of the

cellular markets, even if the resulting integrated system covers more than one state. In both of these cases, the service provided remains predominantly local in nature and thus should not be subject to federal tariffing requirements.

Century also agrees with CTIA that, pursuant to Section 203(a) of the Communications Act,⁷ cellular carriers that act as "connecting carriers" should be exempt from federal tariffing requirements. A connecting carrier is defined as

any carrier engaged in interstate or foreign communications solely through physical connection with the facilities of another carrier not directly or indirectly controlling, controlled by, or under direct or indirect common control with such carrier.⁸

However, Century submits that the "connecting carrier" exception should be interpreted more broadly than in the wireline context. Specifically, mere "indirect" connection with an affiliated interexchange carrier should not prevent a cellular licensee from being classified as a connecting carrier. The language of the provision supports such an interpretation as it focuses only on "physical," not indirect, connections with other carriers.

Moreover, as CTIA properly recognizes, the connecting carrier exemption was created to ensure that smaller companies that pose no monopolistic threat are subject to

⁷ 47 U.S.C. § 203(a).

⁸ 47 U.S.C. §§ 152(b)(2), 153(u).

only minimal federal regulation.⁹ Given their limited amount of interstate traffic, cellular carriers clearly pose no threat to interstate competition. Accordingly, the Commission should define the scope of this exception expansively as applied to cellular carriers.¹⁰

IV. ANY FEDERALLY TARIFIABLE CELLULAR SERVICES SHOULD BE

Commission precedent illustrates that non-dominant treatment has been accorded to carriers in comparable circumstances.¹² As CTIA notes, "[i]t makes little sense to confer non-dominant status on an interexchange carrier the size of MCI, yet retain the dominant classification for cellular carriers which are engaged in interstate services to an extremely limited extent by comparison."¹³

Yet, regardless of the status conferred on cellular carriers, Century urges the Commission to minimize the tariffing obligations of these licensees to the maximum extent consistent with the Act. Streamlined tariffing requirements for cellular carriers are necessary to maintain competitive balance in the wireless marketplace and to ensure the most responsive service to the public. Specifically, Century supports rule changes to allow cellular carriers to file only copies of their rate schedules for applicable interstate services, without burdensome supporting

¹² Local Multipoint Distribution Service, FCC 92-538 (released Jan. 8, 1993) at ¶ 27 (Notice of Proposed Rulemaking); Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 2 FCC Rcd 485, 490 (1987) (Second Report and Order), aff'd 2 FCC Rcd 6830 (1987), further recon. denied, 4 FCC Rcd 6016 (1989), vacated

information. Cellular carriers should also be permitted to specify "banded rates" that set forth minimum and maximum rate levels.

Additionally, the Commission should eliminate the notice period for cellular tariffs, allowing such tariffs to become effective upon filing. Finally, cellular licensees should be permitted to modify their tariffs at any time. Such streamlined tariffing treatment should satisfy the Commission's informational needs and the requisites of the Communications Act, while according cellular carriers sufficient flexibility to compete effectively and best serve the needs of the public.

V. CONCLUSION

For the foregoing reasons, Century supports CTIA's Request for Declaratory Ruling and Petition for Rulemaking and urges the Commission to proceed expeditiously to resolve the issues presented therein.

Respectfully submitted,

CENTURY CELLUNET, INC.

By: W. Bruce Hanks (NSP)
W. Bruce Hanks

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 1993, I caused copies of the foregoing "Comments of Century Cellunet, Inc." to be mailed via first-class postage prepaid mail to the following:

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